

You Seized the Property. Now What Do You Do?

Execution Sales

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After an Execution Levy

- Now you have property to sell...so what do you do?

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Agenda

Notice of Sale

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Notice of Sale – Personal Property

Day of the Sale

When the Sale is Complete

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Example Sale

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Notice of Sale


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Steps for the Notice of Sale

1. Prepare the Notice of Sale
2. Publish the Notice of Sale
(real property only)
3. Post the Notice of Sale
4. Mail/Deliver Notice of Sale to all
interested parties

Notice of Sale of Real Property

State of Texas
County of Travis



Cause: DIGN18007318-1

By virtue of an Writ of Execution issued by the clerk of the District Court 200 Court of TRAVIS County, Texas, August 29, 2019, in case numbered DIGN18007318-1, styled NORTH BURNETT GUN STONE, LLC versus SHERRY TACK, TRUSTEE OF THE HARVEY DONALD TESTAMENTARY FAMILY TRUST on a judgment rendered against SHERRY TACK, TRUSTEE OF THE HARVEY DONALD TESTAMENTARY FAMILY TRUST on September 03, 2019, at 12:20 p.m., they come as the property of SHERRY TACK, TRUSTEE OF THE HARVEY DONALD TESTAMENTARY FAMILY TRUST the following described real property:

Lot 1, A. of Gray & Becker 2nd, Annex, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 69, Page 7, of the Plat Records of Travis County, Texas of the map or plat records of Travis County, Texas, on October 01, 2019, being the first Tuesday of the month, between the hours of 10:00 A.M. and 4:00 P.M., beginning at 10:00 a.m., at the Travis County Courthouse, 1000 Guadalupe Street, Austin, Texas, I will sell for cash to the highest bidder, all the right, title and interest of SHERRY TACK, TRUSTEE OF THE HARVEY DONALD TESTAMENTARY FAMILY TRUST in and to the real property described above.

Dated at Austin, Travis County, Texas, September 04, 2019

Carlos B. Lopez,
Constable Precinct 5
Travis County, Texas

Carl Eller LSL
SR. DEPUTY CARL ELLER, Deputy

Notice to Bidders: You are buying whatever interest, if any, the Debtor has in the property. Purchase of the Debtor's interest in the property may not extinguish any liens or security interests held by other persons. There are no warranties, express or implied, regarding the property being sold, including but not limited to warranties of title, merchantability or fitness for a particular purpose.

Notice to Judgment Debtor: If there is any property, real or personal, you want to point out for levy in lieu of the above described property, you must contact this office immediately. Bidders shall present an unexpired written statement issued to the person in the manner prescribed by Section 34.025, Tax Code, showing that the Travis County Assessor-Collector has determined that there are no delinquent ad valorem taxes owed by the person. In addition, an individual may not bid on or purchase property in the name of any other individual.

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Information Needed For Notice of Sale

- Style of Case: Plaintiff vs. Defendant
- Cause Number
- List Court Issuing Execution or Order of Sale
- Property Description.
 - Real Property – Legal Description and “more commonly known as” (specific address, if any)
 - Personal Property – Any Identifiers: Brand/Manufacture Names, Year Manufactured, Serial Number, Model No., and a Detailed Description (Photos are helpful)
- Include Relevant Dates:
 - Date of Judgment - Date Came to Hand - Date Levied
 - Date of Issuance - Date of Expiration - Sale Date

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Information Needed For Notice of Sale (continued)

- Date and Time of Sale –
 - Time: **Personal Property** – state the specific time the sale will begin
 - Time: **Real Property** – “Between the hours of 10:00 am and 4:00 pm”
- Location of Sale
 1. **Personal Property:** Give Specific Address Sale To Be Held
 2. **Real Property:** Specific Address to the Court House Door, or location the Commissioners Court has designated as the Court House Door.
- Terms: Cash, Cashiers Check, Money Order or Wire Transfer

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Potential Additional Terms for Notice of Sale

- Additional terms may be needed, such as:
 - Firearms Sold Only To persons with FFL or LTC, or background check required as condition to sale.
 - Alcohol Sold Only To TABC Licensee's or Permittee's
 - Properties To Be Sold In Separate Lots, describe
 - Real Property To Be Sold Separately Until Judgment Satisfied.

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Question #1

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Notice of Sale – Real Property

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Sale of Real Property

Texas Rules of Civil Procedure Rule 646a

Real property taken by virtue of any execution **shall be sold:**

- At public auction,
- At the courthouse door of the county, unless the court orders that such sale be at the place where the real property is situated
- On the 1st Tuesday of the month, between the hours of 10:00AM - 4:00PM

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Courthouse Door Defined

Texas Rules of Civil Procedure Rule 648

- “Courthouse door” of a county means either of the principal entrances to the house provided by the proper authority for the holding of the district court.
- Or any other place designated by the Commissioners Court of said county

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Publication of Notice of Sale

TRCP Rule 647

- The time & place of sale of real estate under execution, order of sale, or *venditioni exponas* shall be advertised by the officer by having the notice thereof published in the English language once a week for **3 consecutive weeks** preceding such sale, in some newspaper in said county.

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Publication of Notice of Sale (*continued*)

Texas Rules of Civil Procedure Rule 647

- The 1st of said publication shall appear no less than 20 days immediately preceding the day of the sale.
- Shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time & place of sale.
- Shall also contain a brief description of the property to be sold, it shall give the number of acres, it shall state the original survey, locality in the county, AND ***the name by which the land is most generally known.***
 - ***IE: Legal description of the property***

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What if There is No Newspaper?

Texas Rules of Civil Procedure Rule 647

- If there is no newspaper published in the county,... **the officer shall then post such notice in writing in three public places in the county**, one of which shall be at the courthouse door of such county, for at least twenty days successively next before the day of sale.

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Notice to Defendant

Texas Rules of Civil Procedure Rule 647

- The officer making the levy shall give the defendant, or his attorney, written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements.
- **Advice: mail regular and certified to the plaintiff and attorneys also**

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Question #2

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Notice of Sale – Personal Property

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Sale of Personal Property

Texas Rules of Civil Procedure Rule 649

Personal property levied on under execution shall be offered for sale on the premises:

- where it is taken in execution,
- or at the courthouse door of the county
- or at some other place if, owing

to the nature of the property, it is more convenient to exhibit it to purchasers at such place.

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Sale of Personal Property (*continued*)

Texas Rules of Civil Procedure Rule 649

Personal property susceptible of being exhibited shall not be sold unless it can be present and subject to the view of those attending the sale.

Exceptions:

1. Shares of stock in a joint stock or incorporated companies
2. In cases where the defendant in execution has merely an interest without right to the exclusive possession in which case the interest of defendant may be sold and conveyed without the presence or delivery of the property.

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Posting Notice of Sale

Texas Rules of Civil Procedure Rule 650

Previous notice of the time and place of the sale of any **personal property** levied under execution shall be given by posting notice thereon for

- ✓ For ten days successively immediately prior to the day of sale
- ✓ At the courthouse door of any county
- ✓ **And** at the place where the sale is to be made.

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Question #3

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Day of the Sale

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Sale Day – How To

- What do you do first?
- What about the bidders?
- How do you begin the sale?
- Where to start the bidding?
- What about storage costs? Fees?
- Do you give a warranty on the property?
- Who collects the monies?

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Getting Started

- Begin at the time publicized in notice of sale (btwn 10 a.m. & 4 p.m.).
- Have the “Bidders” sign in, providing the required tax letter and assign each a bidder number.
 - Bidders shall present an unexpired written statement issued to the person in the manner prescribed by Section 34.015, Tax Code, showing that the Travis County Assessor-Collector has determined that there are no delinquent ad valorem taxes owed by the person. In addition, an individual may not bid on or purchase property in the name of any other individual.

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Read the Notice of Sale

- Read the notice of sale aloud for each property.
- Notice of sale should include a disclaimer:
 - Notice to Bidders: You are buying whatever interest, if any, the Debtor has in the property. Purchase of the Debtors interest in the property may not extinguish any liens or security interests held by other persons. There are no warranties, express or implied, regarding the property being sold, including but not limited to warranties of title, merchantability or fitness for a particular purpose.

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Minimum Bid

(Calculate Ahead of Time)

- Should not be less than all costs of suits.
 - Execution service fee
 - Publisher fee/cost
 - Any other advertising fees
 - Attorney ad litem
 - Court costs
 - Posting fees
 - Postage
 - Deed or bill of sale fee
 - Any additional costs –
 - Moving/storage cost
 - (Constable commission – calculated on money collected up to amount of Judgment)

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Conducting the Bidding

- Plaintiff or Constable can start bidding at a higher amount than “Minimum Bid” But Should Not Start Lower than Minimum Bid.
- Plaintiff may direct you to lower the amount several times if necessary, or they may direct you to cancel the sale.
 - They can direct you to lower the bid to an amount that is less than the Calculated Minimum Bid.
 - Example: levy on a trailer or vehicle which is valued less than the costs/minimum bid.
- Record each bid by assigned bidder number.
- Selling price is to the highest bidder with cash in hand (or other accepted form of payment).

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Question #4

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When the Sale is Complete

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Personal Property

- Deputies or clerical staff assigned to collect payment
- Issue a receipt for monies collected
- Within a reasonable time, issue a Constable's Bill of Sale

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Real Property

- Issue a receipt for monies collected
- Within a reasonable time, issue a Constable's Deed
- The Constable's Deed must be signed by the **Constable**, not by a deputy
- It is the buyer's responsibility to have the deed recorded by the County Clerk

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TRAVIS COUNTY OFFICER'S RETURN

CAUSE NUMBER: GV302541

CAME TO HAND ON DECEMBER 30, 2020, @ 3:23 P.M. BY VIRTUE OF AN ORDER OF SALE ISSUED OCTOBER 19, 2020, AND EXECUTED IN TRAVIS COUNTY ON DECEMBER 30, 2020 AT 2:00 P.M. BY LEVYING UPON THE PROPERTY TO WIT:

Lot 3, Block B of (ark at Blackhawk II, Phase 1, an addition to the City offlugerville, Travis County, Texas according to the map or plat thereof recorded in Document no. 2004001213, official public records of Travis County, Texas.

AS NAMED IN THE ORDER OF SALE; AND FURTHER EXECUTED BY POSTING THE NOTICE AT THE TRAVIS COUNTY COURTHOUSE ON DECEMBER 30, 2020; AND MAILING NOTICE TO THE DEFENDANT(S) BY FIRST CLASS AND CERTIFIED MAIL ON DECEMBER 30, 2020; AND BY DELIVERING NOTICE TO THE AUSTIN CHRONICLE ON DECEMBER 30, 2020 FOR PUBLICATION ALL ACCORDING TO LAW. FURTHER EXECUTED BY OFFERING THE PROPERTY AS DESCRIBED IN THE ORDER OF SALE AT THE TRAVIS COUNTY COURTHOUSE ON FEBRUARY 2, 2021 BETWEEN THE HOURS OF 10:00 O'CLOCK A.M. AND 4:00 P.M. AND BY SELLING THE PROPERTY TO THE HIGHEST BIDDER **HISTORIC HOMES FIRST, INC.** FOR THE SUME OF \$ 110,000.00. THE CONSTABLES COMMISSION OF \$ 6320.00 IS DEDUCTED FROM THE SALE PROCEEDS LEAVING A BALANCE OF \$ 103,680.00 DUE TO THE PLAINTIFF.

THIS ORDER IS RETURNED TO COURT ON FEBRUARY 10, 2021.

CARLOS LOPEZ, CONSTABLE
CONSTABLE, TRAVIS COUNTY, PRECINCT 5

BY: _____
JULIEN SMITH
SENIOR DEPUTY CONSTABLE
PROPERTY - UNIT 534

The Return

- Be thorough in your return to court.
- Tell the story of what actions were taken.
- Describe what property was levied, if any.
- Were any monies collected.
- Explain how you sold property or distributed the money .
- Don't leave room for the court or anyone else to need to ask questions.

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The Return: Break Down All Monies Paid Out

- Judgement
- Court costs
- Attorney fees
- Costs of executing the writ
 - Storage fees
 - Towing costs
 - Publication costs
 - Excessive deputy time
 - Deed/bill of sale fee (if collected in your county)

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Question #5

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Potential Issues That Could Arise in Execution Sales

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Question #6

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Remedies if the Defendant Wants to Stop the Sale

- Bankruptcy
- Supersedeas bond
- Temporary Restraining Order

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What if You Run Out of Time to Hold the Sale?

Writ of Venditioni Exponas:

- Used to extend the life of a writ of execution when the property has been seized and the writ under which it was seized will expire before the property can be sold. Regardless of the efforts of the officer and the plaintiff, sometimes real or personal property levied on cannot be sold before the writ expires, i.e. discovery of errors in publication, delay in seizure of property due to acts of the defendant.
- While its only reference is in Rule 647 relating to Notices of Sale of Real Estate, the writ has been used per case law to extend the life of the writ of execution on personal property as well. *Warnock v. Marin*, 93 S.W.2d 793 (Tex. App. –El Paso, 1936, no writ).

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What if the Sale is Not posted or Published Properly?

- Improper sale liability - Civil Practice & Remedies Code Section 34.066
- If an officer sells property without giving notice as required by the Texas Rules of Civil Procedure or sells property in a manner other than that prescribed by this chapter and the Texas Rules of Civil Procedure, ***the officer shall be liable only for actual damages sustained*** by the injured party.

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Question #7

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You As the Officer May **Not** Purchase Property!

Civil Practice & Remedies Code Section 34.048

“ If an officer or his deputy conducting an execution sale ***directly or indirectly*** purchases the property, the sale is void.”

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Example Sale

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Example Sale Documents

- Bid Sheet
- Notice of Sale to Post
- Notice of Sale for Publisher
- Constables Return
- Disbursement Instructions

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Other Examples?

Questions?

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